



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2022-0370; FRL-9950-01-R5]**

**Air Plan Approval; Wisconsin; 2015 Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve rules submitted by the Wisconsin Department of Natural Resources (WDNR) as a revision to its State Implementation Plan (SIP). The submitted rules incorporate the 2015 primary and secondary National Ambient Air Quality Standards (NAAQS) for ozone. In addition, WDNR included several updates to ensure implementation of the ozone NAAQS, in areas currently or formerly designated as nonattainment for any ozone standard, in a manner consistent with Clean Air Act (CAA) requirements.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0370 at <https://www.regulations.gov>, or via email to [blakley.pamela@epa.gov](mailto:blakley.pamela@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6031, [hatten.charles@epa.gov](mailto:hatten.charles@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. When and why did the State make this submittal?

- II. What are the State rule revisions?
- III. What is EPA's analysis of the revisions?
- IV. What action is EPA taking?
- V. Incorporation by Reference.
- VI. Statutory and Executive Order Reviews.

**I. When and why did the State make this submittal?**

Section 109 of the CAA requires EPA to establish national primary (protective of human health) and secondary (protective of human welfare) air quality standards for pollutants for which air quality criteria have been issued under section 108 of the CAA (the criteria pollutants<sup>1</sup>). Section 109(d)(1) of the CAA requires EPA to review, and if necessary, based on accumulated health and welfare data, to revise each NAAQS every five years. If a NAAQS is revised, states whose rules include state air quality standards may revise their rules to address the revised NAAQS and associated monitoring requirements, and submit them to EPA as SIP revision requests. See, e.g., 415 ILCS 5/10(H).

On October 26, 2015 (80 FR 65291), EPA revised the primary and secondary ozone NAAQS from 0.075 to 0.070 parts per million (ppm), daily maximum 8-hour concentration, codified at 40 CFR 50.19. The ozone NAAQS continues to use an 8-hour averaging time, calculated as the fourth-highest daily maximum averaged across three consecutive years. EPA also revised the monitoring requirements for ozone, which are codified at 40 CFR part 50.

---

<sup>1</sup> The criteria pollutants are ozone (O<sub>3</sub>), nitrogen oxides (represented by nitrogen dioxide (NO<sub>2</sub>)), sulfur oxides (represented by sulfur dioxide (SO<sub>2</sub>)), carbon monoxide (CO), particulate matter (represented by total suspended particulates (TSP), particulates (PM<sub>10</sub>), and fine particulates (PM<sub>2.5</sub>)), and lead (Pb).

As part of the implementation rule for the 2015 standard, EPA did not address any revocation of the 2008 ozone NAAQS. Thus, currently there are two ozone NAAQS in effect and being implemented: the 2015 ozone NAAQS and the 2008 ozone NAAQS. Several elements of this rule will apply to areas currently or formerly designated as nonattainment for any ozone standard, including these two ozone NAAQS.

On April 8, 2022, WDNR submitted rules to update chapters NR 404 and 484 of Wisconsin's ambient air quality rule to include the 2015 primary and secondary NAAQS for ozone and its incorporation by reference rule to add EPA-promulgated monitoring requirements related to the NAAQS. WDNR revised sections of chapters NR 407 (Operation permits), 408 (Construction permits for direct major sources in nonattainment areas) and 428 (nitrogen oxides (NO<sub>x</sub>) reasonably available control technologies (RACT)) to ensure implementation of the ozone NAAQS in a manner consistent with Federal regulations. As there are currently two ozone NAAQS in effect, the revisions to NR 407, NR 408, and NR 428 clarify which major source emissions thresholds apply in areas subject to more than one ozone nonattainment classifications.

WDNR provided opportunities to comment on the rule during the public comment period from March 1, 2021, through April 15, 2021, and at a public hearing held on April 8, 2021, in accordance with chapter 227 of the Wisconsin Statutes and 40 CFR 51.102. No comments were received.

## **II. What are the State rule revisions?**

### *Chapter NR 404 - Ambient air quality and NR 484 - Incorporation by reference rules*

WDNR updated and amended its ambient air quality rule in chapter NR 404 by adding both the primary and secondary ozone standards for ozone to be consistent with EPA's 2015 NAAQS and codified that revision into section NR 404.04(5)(c). Also, WDNR revised its incorporation by reference rule in chapter NR 484 to add a reference to the monitoring requirements at 40 CFR part 50, appendix U, Interpretation of the National Ambient Air Quality Standards for Ozone, and codified that revision into NR 484.04, Table 2, row 7(s) relating to the incorporation of the 2015 NAAQS for ozone.

### *Chapter NR 407 - Operation permits and Chapter NR 408 - Construction permits for direct major sources in nonattainment areas*

NR 407 applies to all stationary sources required to obtain an operation permit. A "major source" is a stationary source whose emissions exceed a specified threshold. Major source thresholds are defined in part D of title I of the CAA (42 U.S.C. 7501 to 7515) based on an area's ozone nonattainment classifications (100 tons per year (tpy) in areas classified as "moderate," 50 tpy in areas classified as "serious," 25 tpy in areas classified as "severe," and 10 tpy in areas classified as "extreme" nonattainment). This definition is currently

incorporated in Wisconsin's rule at subsection NR 407.02(4)(c)(1)(a).

WDNR is updating the definition of major stationary source at NR 407.20(4)(c) to clarify which major source emissions threshold applies in an area classified as nonattainment for more than one NAAQS. WDNR revised NR 407.20(4)(c) by adding subsection (1)(b). NR 407.20(4)(c)(1)(b) explains that the classification with the lowest emission threshold under subsection NR 407.02(4)(c)(1)(a) determines the major source threshold in an area classified as nonattainment for more than one ozone NAAQS, until the area is redesignated to attainment for a current standard or a redesignation substitute for a revoked standard has been approved by the EPA for the standard with the lowest emission threshold.

*Chapter NR 408 - Construction permits for direct major sources in nonattainment areas*

NR 408 applies to all new major sources and all major modifications located in areas designated as ozone nonattainment by EPA. A "major modification" refers to a modification project, including construction of new emission units and modification of existing units, at an existing source that results in the source's potential to emit exceeding the CAA-specified major source threshold. New major sources and major modifications are subject to nonattainment New Source Review permitting requirements. As such, WDNR updated its definition of "nonattainment" at subsection NR 408.02(24) to

identify which major source or major modification emissions thresholds apply in an area classified nonattainment for more than one NAAQS.

WDNR is revising subsection NR 408.02(24) by adding subsection (c). As subsection NR 408.02(24)(c) explains, the classification with the lowest emission threshold under section NR 407.02 (4)(c)(1)(a) determines the major source or major modification threshold in an area classified as nonattainment for more than one ozone NAAQS, until the area is redesignated to attainment for a current standard or a redesignation substitute for a revoked standard has been approved by the EPA for the standard with the lowest emission threshold.

WDNR also makes a minor change to update the definition of "significant" at subsection NR 408.02(32)(a) to correct an oversight to include NO<sub>x</sub> as an ozone precursor. WDNR amended subsection NR 408.02(32)(a)(6) by adding emissions of NO<sub>x</sub> in reference to determination of a significant net emissions increase or the potential of a source to emit that would equal or exceed a pollutant rate of 40 tpy of NO<sub>x</sub>.

#### *Chapter NR 428 - Control of Nitrogen Compounds*

In subchapter IV of NR 428, to meet the requirements of sections 172(c) and 182 (f) of the CAA, section NR 428.20 includes NO<sub>x</sub> RACT standards for NO<sub>x</sub> emission units in areas that are classified moderate nonattainment for ozone. Currently, in subsection NR 428.20(a)(1)(a), NO<sub>x</sub> RACT requirements apply to sources with maximum theoretical NO<sub>x</sub> emissions equal to or

greater than 100 tpy in Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington, or Waukesha Counties that are or had been previously classified as "moderate" ozone nonattainment areas. WDNR is updating the NOx RACT requirements to expand its applicability to any area that is classified as moderate and above for ozone nonattainment to be consistent with section 182 of the CAA. WDNR revised the applicability of NOx RACT requirements at subsection NR 428.20(1)(a) by adding subsection (2). Subsection NR 428.20(1)(a)(2) includes all the major source emissions thresholds associated with current (and former) ozone nonattainment classification of the area (*i.e.*, 100 tpy in areas classified as "moderate," 50 tpy in areas classified as "serious," 25 tpy in areas classified as "severe," and 10 tpy in areas classified as "extreme" nonattainment). Thus, the revision to the NOx RACT applicability threshold provisions in NR 428 will include other counties that may be classified as moderate in the future or for counties whose ozone nonattainment classifications may be changed from moderate to a more stringent classification and, as a result, have major source thresholds below 100 tpy under the CAA.

In addition, WDNR updated the NOx RACT requirements to clarify which emissions threshold is applicable to the same area due to different ozone standards or a change in nonattainment classification. WDNR amended section NR 428 by adding subsection 428.20(1)(a)(3)(b), which explains that if more than one emission threshold is applicable to the same area due to



different ozone standards or a change in nonattainment classification, the lowest applicable emission threshold applies. To ensure implementation of the ozone NAAQS under NOx RACT, WDNR amended NR 428.20 by adding subsection NR 428.20(1)(a)(3)(c), which states, "The requirements of this subchapter remain applicable to each affected unit regardless of any subsequent decrease in maximum theoretical emissions of NOx at the source to a level below the applicable emission thresholds."

Subsection NR 428.21(3), "Other Regulated Units," provides an exemption for certain NOx emission units. WDNR amended NR 428.21(3), to ensure that the existing 75 tpy exemption threshold continues to apply in areas with a 100 tpy major source emission threshold, by adding subsections NR 428.21(3)(b) and (c). The changes clarify that the exemption applies - if the emissions unit is located in a facility subject to the applicability thresholds specified under section NR 428.20 (1)(a)1, 2(a), or 3(a), and if the emission unit is subject to and meeting an emission limitation in Wisconsin's SIP under section NR 428.04(2) or NR 428.05(3).

Last, WDNR updated NR 428 to create a section that describes the compliance schedule for a facility that has NOx emission units affected by the updated NOx RACT thresholds in NR 428.20, by adding subsection NR 428.255 to include information on compliance schedules. The changes to NR 428 will only have the potential to impact sources whose emissions exceed the NOx

RACT major source applicability.

### **III. What is EPA's analysis of the revisions?**

CAA Section 110(1) prohibits EPA from approving a SIP revision if that revision would interfere with any applicable requirement concerning attainment, reasonable further progress, or any other CAA requirement. EPA concurs with WDNR's 110(1) analysis that the revision to Wisconsin's rules does not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA. The revisions to rules NR 404, NR 407, NR 408, NR 428, and NR 484 have no impact on emissions, ensures implementation of the ozone NAAQS in areas designated nonattainment and are consistent with the requirements of the CAA.

### **IV. What action is EPA taking?**

EPA is proposing to approve revisions to chapters NR 404, 407, 408, 428, and 484, as submitted on April 8, 2022, into the Wisconsin SIP. The revision to chapters NR 404 and 484 update Wisconsin's ambient air quality rule to incorporate the 2015 ozone NAAQS and the incorporation by reference rule with the monitoring requirements related to the NAAQS make Wisconsin's rules consistent with the Federal regulations. Additionally, the clarifications and updates to sections of chapters NR 407, 408 and 428, ensure implementation of the ozone NAAQS in areas designated nonattainment and are consistent with the CAA.

### **V. Incorporation by Reference**

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 404, NR 407, NR 408, NR 428, and NR 484 as published in the Wisconsin Register #794 on February 28, 2022, effective March 1, 2022, discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 9, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*